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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,533	04/09/2007	Graeme William Sturgeon	08436.0104USWO	7120
23552 7590 07/30/2009 MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903				
EXAMINER				
ROWAN, KURT C				
ART UNIT		PAPER NUMBER		
3643				
MAIL DATE		DELIVERY MODE		
07/30/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/581,533

Applicant(s)

STURGEON ET AL.

Examiner

Kurt Rowan

Art Unit

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,5,7,9,10,12-14,16-19,23 and 25-29 is/are pending in the application.
- 4a) Of the above claim(s) 28 and 29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,5,7,9,10,12-14,16-19,23,25-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2, 4, 7, 10, 18, 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Popp (US 2247066) for substantially the same reasons stated in the last Office Action.

3. The patent to Popp shows an extermination device. In reference to claims 1 and 19, Popp shows an exterminating device having a holder 10 and a trigger mechanism 19, 24. The holder is configured to hold an expanded resilient ring 11-12, and the device is configured to release the ring free of the extermination device such that it contracts around a pest when the trigger mechanism is actuated by the pest as disclosed in page 1, column 2, line 38 to page 2, column 1, line 15. In reference to claim 7, Popp shows a firing member 17. In reference to claim 10, Popp discloses that the resilient ring is made from piano wire and a spring, which can be considered as a composite material.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and

the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 9, 12, 13, 14, 16-17, 25-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Popp (US 2247066) for substantially the same reasons stated in the last Office Action.
6. The patent to Popp shows a pest extermination device as discussed above. In reference to claim 9, Popp discloses that the resilient ring is made from piano wire, but it would have been obvious to employ a natural or synthetic rubber since the selection of a known material is based on its suitability for the intended use. See *In re Leshin et al.*, 125 USPQ 416. In reference to claims 12-13, Popp does not disclose the size of the opening of the holder as being in the range of 25-40mm or 60-100 mm, but routine experimentation would be used to determine the optimum size of the opening depending on the size of the target species. In reference to claim 14, Popp shows one resilient ring, but it would have been obvious to employ more than one ring for multiplied effect. See *In re Harza*, 124 USPQ 378.
7. Claims 5 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Popp as applied to claims 1 and 14 above, and further in view of Spillett (US 4735011) for substantially the same reasons stated in the last Office Action.
8. The patents to Popp and Spillett show animal traps. Popp has been discussed above and does not show bait being used with the trap. Spillett shows an animal trap having bait on screen 62 such that the bait is located between the trigger 40 is between the bait (on screen 62) and the first end of the trap which is taken to be the bottom end. In reference to claims 5 and 23, it would have been obvious to provide the trap of Popp

with bait having the trigger between the bait and a first end of the device as shown by Spillett for the purpose of attracting a target species to the extermination device.

Response to Arguments

9. Applicant's arguments filed 4/29/2009 have been fully considered but they are not persuasive. Applicant's responses overcomes the rejections under 35 USC 112, 2nd paragraph. Applicant states that the Popp fails to disclose that the device is configured to release the resilient ring free of the extermination device. The extermination device is taken to be frame 10 with small shoulder 23, the trigger 19, and trigger extension 24. Hence, Popp releases the ring free of the extermination device since once the ring is released, the rest of the extermination device can be moved without moving the ring, stake, and chain. As to the statement in Popp that "the trap may be constructed in any size and be used for catching any size of animals and may be adjusted so as to not catch the animal alive", one skilled in the art would have the skill to adjust the trap to achieve this end since it would basically mean making the noose tighter. Therefore, Popp can be considered to exterminate a pest and meets all of the limitations of claims 1 and 19. In reference to claim 9, applicant argues that it would not have been obvious to provide Popp with a natural or synthetic rubber ring, but the selection of a known material is based on its suitability for the intended use. See In Leshin, 125 USPQ 416. Since Popp contemplates several embodiments/uses, one of which is to trap prey live for breeding. In this example, it would have been obvious to employ a rubber ring to protect the animal from injury. Popp discusses that ordinary chain is not suitable for the noose, but does not disclose that natural or synthetic rubber

is unsuitable. Hence, it would have been obvious to employ natural or synthetic rubber for the noose. It should be pointed out that rubber, while generally considered to be a flexible material, can be quite stiff, especially when cold and/or when the thickness is increased.

Conclusion

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is (571) 272-6893. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (571) 272-6891. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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Primary Examiner
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